IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8441 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S P THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR MR ANAND for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/03/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. In this petition under Article 226 of the Constitution of India filed by the petitioner he is praying direction to the respondents to treat him as continuing in service up to 5th January, 1991 and confer upon him all benefits of service including salary, retirement benefits and all other dues and benefits on that basis.

#. The respondents have filed reply to the Special Civil Application to which the petitioner filed rejoinder. The facts of the case are that the petitioner last worked as Principle of R.C.Technical Institute, Saraspur, Ahmedabad, a Government institute. He has been ordered to be retired under order dated 30.9.1990. What the petitioner submitted that as per the policy decision Annexure-A of the Government dated 26.8.1987, he was entitled to be retained in service up to the end of the term, which was fixed 31.12.1990 and then revised to 5.1.1991. Copy of the relevant circular dated 20.11.1990 fixing the date of 5.1.1991 as the end of term is annexed as Annexure-B.

#. In the reply to the Special Civil Application in para 5 thereof the respondent replied the contents of the petitioner as contained in para 3 thereof. It is not in disputed that under the document at Annexure-B the respondent fixed academic term up to the end of 31.12.1990 which was revised up to 5.1.1991. What it is stated that it has been done after the retirement of the petitioner. It is further stated that the Technical Examination Board has fixed the term up to 21.9.1990 for all students vide their Circular dated 28.2.1990. In para No.9 of the reply to the Special Civil Application, the respondent stated that the students tuition term of the new entrants was to be ended on 31.12.1990 and, therefore, the benefit of continuation up to 31.12.1990 cannot be given to the petitioner. This is clearly a contradictory statement. So far as first defence relates that the Technical Examination Board fixed term 21.9.90 it is suffice to say that this decision of the aforesaid Board will not supersede the Government Decision at Annexures A and B. Second defence taken that the Annexure B has come in force after retirement of the petitioner, it is suffice to say that it is only a dishonest plea taken by the Welfare State. Annexure-B has to be read with Annexure-A and conjoint reading thereof gives out that the academic term for the new entrants shall end 5.1.1991.

#. The claim of the petitioner made for continuing in service up to 5.1.1991 deserves acceptance and

accordingly this petition succeeds and the same is allowed. It is hereby declared that the petitioner is entitled to continue in services up to 5.1.1991. It is further declared the petitioner shall be entitled for consequential benefits of the declaration aforesaid. The amount of the benefits which are accrued to the petitioner because of the declaration aforesaid are to be determined by the respondents within a period of 2 months from the date of the receipt of the writ of this order. The petitioner shall be entitled for interest @18% p.a. on the amount payable to him on the calculation in pursuance of this order. The principle amount together with interest amount calculated thereof be paid to the petitioner within a period of 15 days next. It is a fit case where the petitioner has to be awarded cost of the litigation. The respondent-State is directed pay Rs.2,000/= as costs of the petition to the petitioner.

(S.K.Keshote, J.)

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